

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

KATHLEEN KITTERMAN, ANNA CRONIN,  
CORRIE BALL, MARVIN BALL, MARGARET  
BROGAN and EVAN JONES,

Plaintiffs,

CASE NO. 2:12cv146

v.

CLAUDIO TOVAR-GUZMAN,  
FORTINO GARCIA and SONS  
HARVESTING, INC., and  
KUZZENS, INC.,

Defendants.



DEPOSITION OF  
FORTINO GARCIA

Taken on Behalf of the Plaintiffs

DATE TAKEN: February 21, 2013  
TIME: 3:49 p.m. to 5:18 p.m.  
PLACE: Gregory Court Reporting  
2605 Airport Road South  
Naples, Florida 34112

Examination of the witness taken before:

Terri L. Lewis, Notary and Court Reporter  
Gregory Court Reporting Service, Inc.  
2650 Airport Road South  
Naples, FL 34112

**CERTIFIED COPY**

## APPEARANCES

For the Plaintiffs: PATRICK M. BROGAN, ESQ.  
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Norfolk, VA 23514-3188

For Defendant Claudio Tovar-Guzman and  
Fortino Garcia and Sons Harvesting, Inc.: JAMES R. JEBO, ESQ.  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, VA 23255

For Defendant USAA: JOHN G. BAKER, ESQ.  
Fraim & Fiorella, PC  
Town Point Center  
150 Boush Street, Suite 601  
Norfolk, VA

For Defendant ACE: ALEXANDER K. PAGE, ESQ.  
LeClair Ryan  
123 East Main Street  
Eighth Floor  
Charlottesville, VA 22902

For Defendant Kuzzens, Inc.: BRIAN N. CASEY, ESQ.  
Taylor & Walker, PC  
555 East Main Street  
Suite 1300  
Norfolk, VA 23510

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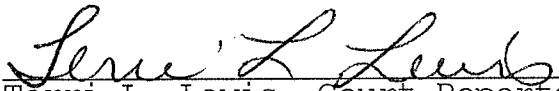
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## 1 CERTIFICATE OF OATH

2  
3 STATE OF FLORIDA )

4 COUNTY OF COLLIER)

5  
6 I, Terri L. Lewis, Court Reporter and Notary  
7 Public, State of Florida, do hereby certify that FORTINO  
8 GARCIA personally appeared before me on the 21st day of  
9 February 2013 and was duly sworn.10 WITNESS MY HAND AND MY SEAL in the City of  
11 Naples, County of Collier, State of Florida, this 5th  
12 day of March 2013.13  
14  
15   
16 Terri L. Lewis, Court Reporter  
17 and Notary Public  
18 State of Florida  
19 My Commission No. DD 909558  
20 Expires: August 23, 2013  
21  
22  
23  
24  
25

1 to go pick the tomatoes at Kuzzens' farm in Exmore,  
2 Virginia?

3 A Correct.

4 Q Okay. And was this also the way it was back  
5 in June and July of 2011?

6 A Correct.

7 Q Okay. All right. I'm going to take a step  
8 back from that and ask you about your business itself.  
9 You own a business called Fortino Garcia and Sons  
10 Harvesting, Inc., correct?

11 A Yes.

12 Q And is that incorporated in the State of  
13 Florida?

14 A Yes.

15 Q Okay. Are you the sole owner of that company?

16 A Me and my wife.

17 Q You and your wife. Is she an officer in the  
18 company?

19 A Yes.

20 MR. BAKER: This is John. He's got to speak  
21 up.

22 MR. BROGAN: Can you speak up?

23 THE WITNESS: Yes.

24 BY MR. BROGAN:

25 Q All right. I'll be asking you about Fortino

1 of 2011, did your -- did the employees, the workers, get  
2 paid every week?

3 A Yes.

4 Q Who gave them the checks?

5 A The company -- I mean Lipman.

6 Q Lipman. Lipman gave them -- and was it a  
7 Lipman check?

8 A Yes.

9 Q Okay. Did Tovar-Guzman get a check every week  
10 that -- when he was working in June of 2011 in South  
11 Carolina at Lipman's farm?

12 A Yes.

13 Q And that was Kuzzens, Inc.'s farm; is that  
14 correct?

15 A Yes.

16 Q Okay. When all the workers are trying to get  
17 from South Carolina to Virginia, how do they get from  
18 South Carolina to Virginia?

19 A Some of them ride the bus with Victor Roman,  
20 and some of them have their own vehicles.

21 Q Okay. So -- but you do provide transportation  
22 to the migrant workers from Kuzzens' farm in South  
23 Carolina to Kuzzens' farm in Exmore?

24 A Yes.

25 Q Okay. I understand that you hired -- or at

1 least in your answers to interrogatories you say you  
2 hired an individual name Victor Sanchez. Who is Victor  
3 Sanchez?

4 A He was just there. I told him I needed a  
5 driver for my bus because I had to stay behind, and he  
6 said that he would take the bus for me. I paid him  
7 \$200. And then he said the other guy said he's going to  
8 go with him, you know, to show him where the farm was,  
9 the camp with the people's things.

10 Q And by the other guy, you mean Tovar-Guzman?

11 A Tovar, guess.

12 Q Okay. So where is -- how do you know Victor  
13 Sanchez?

14 A I never known him. He just knew that I was  
15 looking for a driver, and he come to me.

16 Q Okay. Did he fill out one of those  
17 pre-employment --

18 A No.

19 Q -- questionnaires?

20 A No.

21 Q Okay. Where does Victor Sanchez work? I  
22 mean, where does he live now?

23 A At the time he was in South Carolina.

24 Q Did you have an address for him?

25 A No.



1           Q     Do you have a photocopy of a driver's license  
2 he had?

3           A     No. I just checked his license to make sure  
4 it was good --

5           Q     Okay.

6           A     -- and he had a license to drive the bus.

7           Q     What license did he have?

8           A     Class A, CDL, passenger endorsement.

9           Q     For what state?

10          A     South Carolina.

11          Q     When was this that you talked to him?

12          A     I don't remember.

13          Q     Do you know when they left South Carolina?

14          A     I think it was on the 29th, the 28th of --  
15 because we were supposed to be, on the 1st, in Virginia.

16          Q     You were supposed to be in Virginia on the 1st  
17 of July in 2011?

18          A     Yes.

19          Q     And why were you supposed to be there  
20 July 1st?

21          A     To start harvest, second crop.

22          Q     Who told you to be there July 1st?

23          A     Garcia, but I don't remember if it was the  
24 first or the -- to be -- I don't know what actual day,  
25 but it was around them days.

1 Q Okay. You know this accident happened  
2 July 2nd at about 7 o'clock in the morning.

3 A (Witness nods head.)

4 Q Do you know when this guy Victor Sanchez and  
5 Tovar-Guzman left South Carolina?

6 A It was on the 1st around 8 o'clock at night.

7 Q Have you ever seen Victor Sanchez since?

8 A I -- no.

9 Q Have you spoken to him since?

10 A No.

11 Q Do you have any paperwork on this guy Victor  
12 Sanchez?

13 A No.

14 Q Did you pay him \$200 in cash or check?

15 A Cash.

16 Q You don't have any information as to what --  
17 where he lived?

18 A (Witness shakes head.)

19 Q You didn't photocopy his CDL?

20 A No.

21 Q Did he have insurance? Did he personally have  
22 insurance, an automobile insurance?

23 A I don't know.

24 Q Okay. Do you know what happened to Victor  
25 Sanchez?

1 A No.

2 Q Did he ever make it to Exmore, Virginia?

3 A No.

4 Q Did he make it --

5 A What happened, down the middle of the road,  
6 Guzman told me that he stepped off the bus, he never  
7 came back, and that's when he drove the bus.

8 Q Did he say where he was when this guy Sanchez  
9 stepped off the bus?

10 A He just told me somewhere in South Carolina --  
11 South Carolina.

12 Q Was it North or South Carolina?

13 A North Carolina.

14 Q I mean, did he say what city in North  
15 Carolina?

16 A No.

17 Q Did he say why they were stopping in North  
18 Carolina?

19 A No. He just told me they stopped at the  
20 store.

21 Q Did he tell you what they were buying?

22 A No.

23 Q Did they buy alcohol?

24 A No.

25 Q So Victor Sanchez, did he ever work for you --

1 A No.

2 Q -- other than the fact that you paid him \$200  
3 to drive your bus?

4 A Yes.

5 Q Okay. How did you find him?

6 A He was always around at the store where we  
7 usually get our fuel. He found out I needed a driver.  
8 He came up to me, and he told me that he would help me  
9 out, and I said fine.

10 Q So did you hire him July 1st at 8 o'clock  
11 before the -- how much before they left did you hire  
12 him? How --

13 A I didn't -- well, I didn't hire him. I just  
14 paid him to take the bus.

15 Q Okay. Paid him to take the bus. When did you  
16 pay him to take the bus; when they were leaving?

17 A When they left.

18 Q Okay. So the bus was all packed with gear; is  
19 that right?

20 A Stuff, people -- people's stuff, yes.

21 Q Okay. And it was packed with the stuff of all  
22 the various migrant and seasonal workers?

23 A (Witness nods head.)

24 Q And you had arranged this, like, the day  
25 before, or did you just go and fill up with gas and find

1 Victor Sanchez hanging around the filling station?

2 A No, I was at the camp. I was going to drive  
3 the bus. He come up, and he told me he would help me  
4 out. And I said fine, because I had stuff to do, and I  
5 didn't want to go and come back, so that's why I said  
6 fine.

7 Q Okay. So you've never seen him since?

8 A No.

9 Q He wasn't hanging around the farm this year?

10 A No.

11 Q So when was he supposed to -- when was Victor  
12 Sanchez supposed to get the bus to Exmore, Virginia?

13 A Next day, next morning.

14 Q Okay. Why? Was there a reason that they  
15 needed to be there that early?

16 A He had to have the people's belongings at the  
17 camp.

18 Q Was there a time?

19 A No.

20 Q Were the people working that Saturday?

21 A No.

22 Q If Victor Sanchez hadn't come along, what  
23 would you have done?

24 A I was going to drive it myself.

25 Q Okay. And were you going to leave at

1 8 o'clock that evening --

2 A Yes.

3 Q -- and drive through the night?

4 A Yes.

5 Q Did you discuss with -- you know, in your  
6 answers to interrogatories you say that Tovar-Guzman was  
7 forbidden to drive the bus. How do you -- what words  
8 did you use to tell Tovar-Guzman not to drive the bus?

9 A Tovar works for me in the farm, in the fields.  
10 He drives the trucks for me in the fields, and he knows  
11 that he wasn't -- he never drives on the highway. So he  
12 knew that he wasn't supposed to drive that bus.

13 Q Okay. So you didn't -- you didn't specify,  
14 you know, July 1st at 8 o'clock, as they're leaving, and  
15 Tovar, you know you're not supposed to drive this bus,  
16 right?

17 A No, I didn't.

18 Q Okay. But he does drive the bus when it's in  
19 the fields?

20 A Not the bus, the field trucks.

21 Q The field trucks.

22 A Right.

23 Q What's a field truck?

24 A Tomato trucks that we use in the farm like  
25 with a flatbed that we put tomatoes on them.

1 offenses?

2 A No.

3 Q He didn't tell you that? And he didn't --  
4 okay. I won't submit that exhibit.

5 MR. BROGAN: All right, guys. I'm done.

6 Anybody want to ask other questions?

7 MR. CASEY: This is Brian Casey. I've got  
8 just a small number of questions.

9 MR. JEBO: Okay.

10 CROSS-EXAMINATION

11 BY MR. CASEY:

12 Q Mr. Garcia, I'm Brian Casey, and I've got a  
13 few questions to ask you.

14 Did you hire Mr. Tovar-Guzman to drive the bus  
15 at the time of the accident?

16 A No, sir.

17 Q Did your company, Fortino Garcia and Sons  
18 Harvesting, Inc., hire Mr. Tovar-Guzman to drive the bus  
19 at the time of the accident?

20 A No.

21 Q Did anyone hire Mr. Tovar-Guzman to drive the  
22 bus?

23 A No.

24 Q And did he get paid to drive the bus?

25 A No.

1 Q Why not?

2 A Because he wasn't supposed to.

3 Q Would he have been paid if there had been no  
4 accident?

5 A No.

6 MR. CASEY: I don't have anymore questions,  
7 thank you.

8 MR. BAKER: I've actually got one. This is  
9 John Baker.

10 CROSS-EXAMINATION

11 BY MR. BAKER:

12 Q Mr. Garcia, you said you have an insurance  
13 broker for your company's policies?

14 A For the bus, yes, sir.

15 Q Do you know the insurance broker's name?

16 A At the time, it was Bruce Henry.

17 Q What company is he with?

18 A Bruce Henry Insurance in Immokalee.

19 Q Where is that located?

20 A Immokalee, Florida.

21 Q Can you spell that?

22 MR. JEBO: I-m-m -- hang on;

23 I-m-m-o-k-a-l-e-e, Immokalee.

24 MR. CASEY: All right. I don't have anymore  
25 questions.



CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF COLLIER

I, Terri L. Lewis, do hereby certify that I was authorized to and did stenographically report the deposition of FORTINO GARCIA; that a review of the transcript was not requested; and that the foregoing transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 5th day of March 2013 at Naples, Collier County, Florida.

  
Terri L. Lewis, Court Reporter  
and Notary Public